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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,126	06/23/2003	Scott Seamans	40130-050100	9833

20350 7590 05/16/2005

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EXAMINER

MOHANDESI, JILA M

ART UNIT PAPER NUMBER

3728

DATE MAILED: 05/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/603,126

Applicant(s)

SEAMANS, SCOTT

Examiner

Jila M Mohandesi

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 February 2005.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4,6,10 and 16-27 is/are pending in the application.  
4a) Of the above claim(s) 16-20 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-4,6,10 and 21-27 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 7/27/05 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 03-04-05.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. This application contains claims 16-20 drawn to an invention nonelected without traverse in Paper filed February 22, 2005. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Claim Objections***

2. Claim 6 is objected to because of the following informalities: Claims 6 depends from the cancelled claim 5, for purposes of examination the examiner will treat claim 6 to depend from claim 1. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 6, 21, 22, 24, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seidel et al. (4,476,600) in view of Aguerre (6,237,249). Seidel '600 discloses a breathable footwear piece, the breathable footwear piece comprising: a base section, wherein the base section includes an upper and a sole formed as a single part manufactured from a moldable foam material; and wherein the upper includes a substantially horizontal portion (3) and a substantially vertical portion (5), and wherein a plurality of ventilators (6) are formed in the substantially vertical portion. See Figure 1

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embodiment. Seidel '600 does not appear to disclose a strap section and the specifics of the ventilators. Aguerre '249 discloses breathable footwear with a sole comprising a bottom surface and a support base, and wherein the support base includes a raised pattern where the foot contacts the support base to provide support to the heel of the wearer and helps maintain the footwear in position. Aguerre '249 also discloses the breathable footwear to include a strap attached at opposite ends thereof to the base section for securing the footwear on the foot of the wearer.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a strap to the footwear of Seidel '600 as taught by Aguerre '249 to better secure the footwear to the foot of the wearer.

With respect to the size of the ventilators, it would have been an obvious matter of design choice to modify the size of the ventilators, since such a modification would have involved a mere change in the size of a component. A change in size and shape is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 220 F.2d 459, 105 USPQ 237 (CCPA 1955).

With respect to claim 6, see Figure 6 of Seidel '600.

With respect to claim 24, see Figures 1 and 2 of Aguerre '249, which includes both toe, and heel raised sections for better supporting the foot. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide raised toe and heel sections as taught by Aguerre '249 to better support the foot.

With respect to claim 25, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a support base with a raised pattern to the breathable footwear of Seidel '600 as taught by Aguerre '249 to provide better support to the heel of the wearer and helps maintain the footwear in position.

With respect to claim 26, the toe region of Aguerre '249 clearly follows the contour of a human foot. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the toe section of the footwear of Seidel '600 follow generally the contour of the human foot as taught by Aguerre '249 for added comfort for the wearer.

With respect to claim 21, Aguerre '249 clearly teaches decorative pattern on the upper. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide decorative pattern on the footwear of Seidel '600 as taught by Aguerre '249 to make the footwear more pleasing to the wearer.

5. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over the above references as applied to claim 1 above, and further in view of Matis et al. (6,256,906). Seidel '600 as modified above discloses all the limitations of the claims except the specifics of the ventilators. Matis '906 discloses a breathable footwear with raised ventilators for better conducting the liquid. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide raised ventilators as taught by Matis '906 to better conduct the liquid.

6. Claims 10, 23 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over the above references as applied to claim 1 above, and further in view of Lamstein

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(Des. 416,667). Seidel '600 as modified above discloses all the limitations of the claims except for the support base including raised pattern extending throughout the surface and for the bottom surface of the sole having front and rear tread patterns longitudinally connected by a flat section. Lamstein discloses a molded footwear with the support base including raised pattern extending throughout the surface and with the bottom surface of the sole having front and rear tread patterns longitudinally connected by a flat section. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the support base with raised pattern extending throughout the surface for better massaging the foot and for the bottom surface of the sole having front and rear tread patterns longitudinally connected by a flat section for easier manufacturing as taught by Lamstein.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown is breathable footwear analogous to applicant's instant invention.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jila M Mohandesi whose telephone number is (571) 272-4558. The examiner can normally be reached on Monday-Friday 7:30-4:00 (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**JILA M. MOHANDESI  
PRIMARY EXAMINER**



Jila M Mohandesi  
Primary Examiner  
Art Unit 3728

JMM  
May 12, 2005

Appl. No. 10/603,126  
Amdt. dated February 22, 2005  
Reply to Office Action of December 17, 2004

**Amendments to the Drawings**

The attached replacement sheets include changes made in Figs. 1, 3 and 5 and replace the original sheets containing those drawings. In Fig. 1, element 156 has been changed to 150 and previously omitted element 167 has been added. In Fig. 3, previously omitted element 166 has been added. In Fig. 5, previously omitted element 168 has been added.

Approved for entry.  
05-12-05



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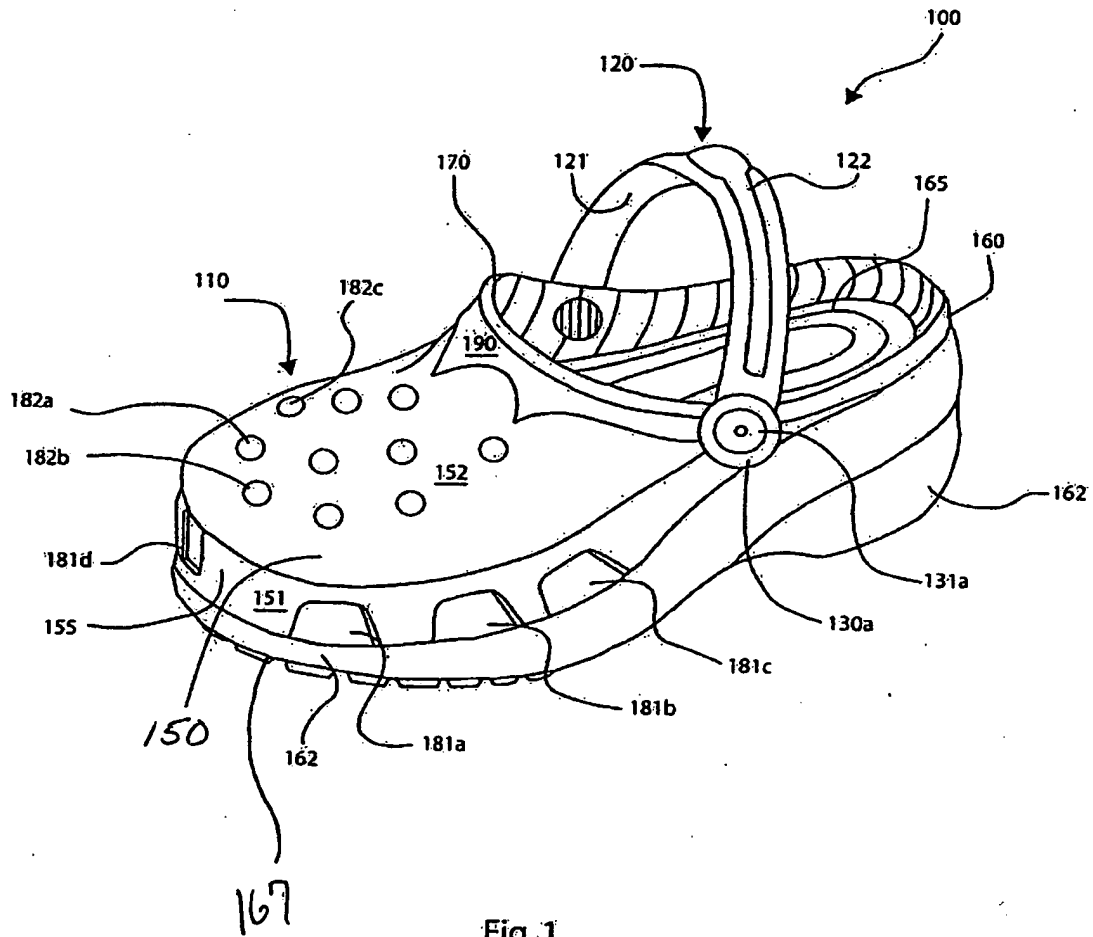
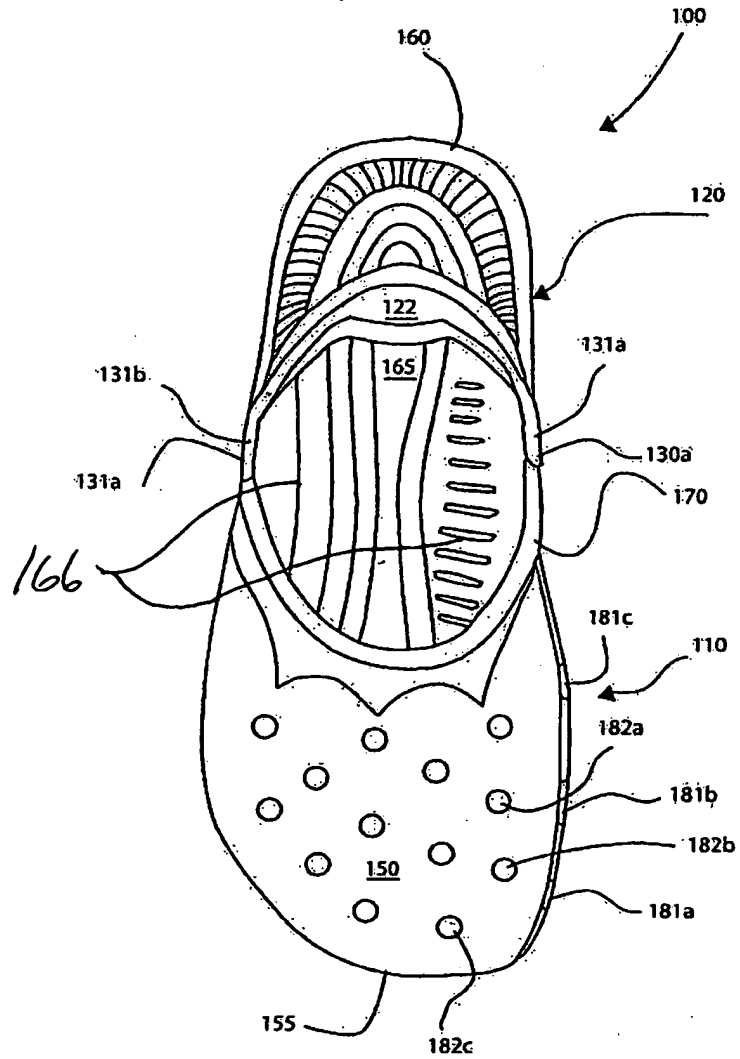


Fig. 1

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**Fig. 3**

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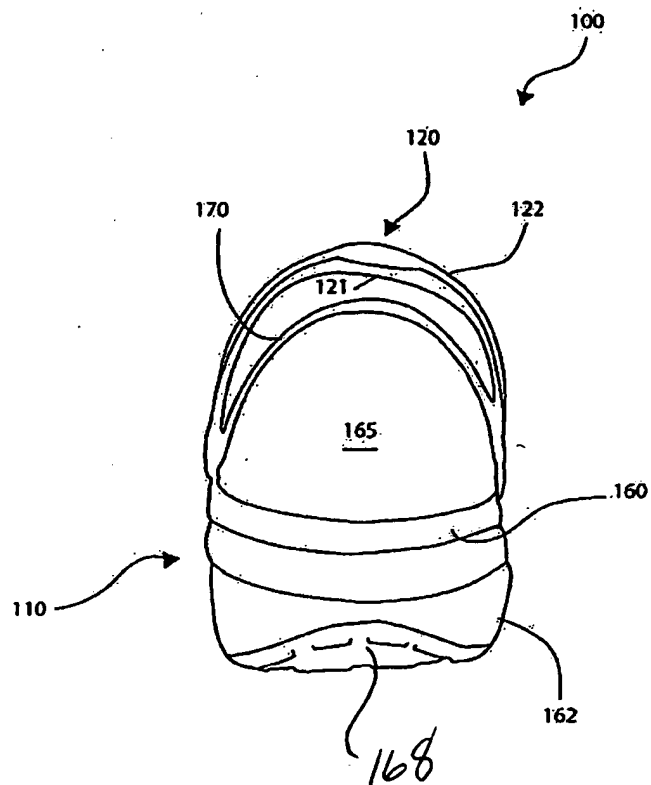


Fig. 5